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Counsel for Plaintiff and the proposed classes

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Stephanie Sotomayor, *on behalf herself and
others similarly situated,*

Plaintiff,

v.

Bank of America, N.A.,

Defendant.

) Case No:

)
) CLASS ACTION COMPLAINT
) FOR DAMAGES AND INJUNCTIVE
) RELIEF

)
) VIOLATIONS OF THE TELEPHONE
) CONSUMER PROTECTION ACT (47 U.S.C. §
) 227) AND THE ROSENTHAL FAIR DEBT
) COLLECTION PRACTICES ACT (CAL. CIV.
) CODE § 1788 *et seq.*)

) DEMAND FOR JURY TRIAL

Nature of this Action

1. Stephanie Sotomayor (“Plaintiff”) brings this class action against Bank of America, N.A. (“Defendant”), under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, and the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”), Cal. Civ. Code § 1788 *et seq.*

2. Upon information and good faith belief, Defendant routinely violates the TCPA by using an automatic telephone dialing system to place non-emergency calls to numbers assigned to a cellular telephone service, without prior express consent, in that it continues to place calls to cellular telephone numbers after being instructed to stop calling those numbers.

3. Upon information and good faith belief, Defendant routinely violates the Rosenthal Act by placing calls to telephone numbers in connection with an attempt to collect a debt after being instructed to stop calling those numbers.

Jurisdiction and Venue

1. This Court has subject matter jurisdiction under 47 U.S.C. § 227(b)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).

2. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) as a portion of the events giving rise to this action occurred in this district.

Intradistrict Assignment

3. Assignment to the Western Division of the Central District of California is appropriate as Plaintiff resides in Lancaster, California, which is located in Los Angeles County.

Parties

4. Plaintiff is a natural person who at all relevant times resided in Lancaster, California.

5. Defendant is a multinational banking and financial services corporation based in Charlotte, North Carolina.

Factual Allegations

6. On or around June 19, 2018, Plaintiff placed a call to Defendant.

7. During the ensuing conversation, Plaintiff provided Defendant her name, the last four digits of her social security number, and her cellular telephone number—(661) XXX-6387.

8. Plaintiff additionally asked Defendant to stop calling her cellular telephone number

9. Also during the conversation, Defendant informed Plaintiff that “this is an attempt to collect a debt and any information obtained will be used for that purpose,” noted that Plaintiff’s account was three payments past due, and asked Plaintiff why she fell behind on her payments.

10. As well, Defendant acknowledged Plaintiff’s request that Defendant stop calling her cellular telephone number, and stated that Defendant would remove Plaintiff’s cellular telephone number from her account.

1 11. No matter, Defendant continued to place calls—over 150 of them—to Plaintiff’s
2 cellular telephone number.

3 12. Upon information and good faith belief, and in light of the frequency, number, nature,
4 and character of the calls at issue, Defendant placed its calls to Plaintiff’s cellular telephone number
5 by using an automatic telephone dialing system.

6 13. Upon information and good faith belief, and in light of the frequency, number, nature,
7 and character of the calls at issue, Defendant placed its calls to Plaintiff’s cellular telephone number
8 by using “equipment which has the capacity—(1) to store numbers to be called or (2) to produce
9 numbers to be called, using a random or sequential number generator—and to dial such numbers
10 automatically (even if the system must be turned on or triggered by a person).” *Marks v. Crunch San*
11 *Diego, LLC*, 904 F.3d 1041, 1053 (9th Cir. 2018).

12 14. To that end, Defendant posted a job opening for a “Collections & Recovery Specialist
13 I & II,” through which it described its position as: “Contacts delinquent customers in order to secure
14 payment and determine reason for delinquency on active or inactive loan, deposit and/or credit card
15 accounts. In the recovery area, collectors will work with customer to establish full balance repayment
16 plans or settlements. Works an established list of accounts on an automated collections system and/or
17 auto-dialer.”¹

18 15. Upon information and good faith belief, Defendant placed its calls to Plaintiff’s cellular
19 telephone number for non-emergency purposes.

20 16. Upon information and good faith belief, Defendant placed its calls to Plaintiff’s cellular
21 telephone number voluntarily.

22 17. Upon information and good faith belief, Defendant placed its calls to Plaintiff’s cellular
23 telephone number under its own free will.

24 18. Upon information and good faith belief, Defendant had knowledge that it was using an
25 automatic telephone dialing system to place its calls to Plaintiff’s cellular telephone number.
26

27 ¹ [https://www.indeed.com/jobs?q=Auto%20Dialer%20System%20Specialist&vjk=e67dd7d](https://www.indeed.com/jobs?q=Auto%20Dialer%20System%20Specialist&vjk=e67dd7dc917103e1)
28 [c917103e1](https://www.indeed.com/jobs?q=Auto%20Dialer%20System%20Specialist&vjk=e67dd7dc917103e1) (last visited Jan. 14, 2019).

1 and can be determined only through appropriate discovery.

2 27. The classes are ascertainable because they are defined by reference to objective criteria.

3 28. In addition, the members of the classes are identifiable in that, upon information and
4 belief, their cellular telephone numbers, names, and addresses, can be identified in business records
5 maintained by Defendant and by third parties.

6 29. Plaintiff's claims are typical of the claims of the members of the classes.

7 30. As it did for all members of the TCPA class, Defendant used an automatic telephone
8 dialing system to place calls to Plaintiff's cellular telephone number, without prior express consent, in
9 that Defendant placed calls to Plaintiff's cellular telephone number after she instructed Defendant to
10 stop calling her number.

11 31. As it did for all members of the Rosenthal Act class, Defendant placed calls to
12 Plaintiff's telephone number in connection with the collection of an alleged debt after she instructed
13 Defendant to stop calling her number.

14 32. Plaintiff's claims, and the claims of the members of the classes, originate from the same
15 conduct, practice, and procedure on the part of Defendant.

16 33. Plaintiff's claims are based on the same theories as are the claims of the members of
17 the classes.

18 34. Plaintiff suffered the same injuries as the members of the classes.

19 35. Plaintiff will fairly and adequately protect the interests of the members of the classes.

20 36. Plaintiff's interests in this matter are not directly or irrevocably antagonistic to the
21 interests of the members of the classes.

22 37. Plaintiff will vigorously pursue the claims of the members of the classes.

23 38. Plaintiff has retained counsel experienced and competent in class action litigation.

24 39. Plaintiff's counsel will vigorously pursue this matter.

25 40. Plaintiff's counsel will assert, protect, and otherwise represent the members of the
26 classes.

1 41. The questions of law and fact common to the members of the classes predominate over
2 questions that may affect individual members of the classes.

3 42. Issues of law and fact common to all members of the classes are:

- 4 a. Defendant's conduct, pattern, and practice of continuing to place calls to cellular
- 5 telephone numbers after being instructed to stop doing so;
- 6 b. Defendant's violations of the TCPA;
- 7 c. Defendant's violation of the Rosenthal Act;
- 8 d. Defendant's use of an automatic telephone dialing system as defined by the TCPA; and
- 9 e. The availability of statutory penalties.

10 43. A class action is superior to all other available methods for the fair and efficient
11 adjudication of this matter.

12 44. If brought and prosecuted individually, the claims of the members of the classes would
13 require proof of the same material and substantive facts.

14 45. The pursuit of separate actions by individual members of the classes would, as a
15 practical matter, be dispositive of the interests of other members of the class, and could substantially
16 impair or impede their ability to protect their interests.

17 46. The pursuit of separate actions by individual members of the classes could create a risk
18 of inconsistent or varying adjudications, which might establish incompatible standards of conduct for
19 Defendant.

20 47. These varying adjudications and incompatible standards of conduct, in connection with
21 presentation of the same essential facts, proof, and legal theories, could also create and allow the
22 existence of inconsistent and incompatible rights within the classes.

23 48. The damages suffered by each individual member of the classes may be relatively
24 small, thus, the expense and burden to litigate each of their claims individually make it difficult for
25 the members of the classes to redress the wrongs done to them.

26 49. The pursuit of Plaintiff's claims, and the claims of the members of the classes, in one
27 forum will achieve efficiency and promote judicial economy.

1 that [the defendant], despite being informed it had the wrong number, has placed more than two calls
2 to [the plaintiff's] cellular telephone number.”).

3 **Prayer for Relief**

4 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 5 a) Determining that this action is a proper class action;
- 6 b) Designating Plaintiff as a class representative under Federal Rule of Civil Procedure
7 23;
- 8 c) Designating Plaintiff's counsel as class counsel under Federal Rule of Civil Procedure
9 23;
- 10 d) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(a)(iii);
- 11 e) Adjudging that Defendant violated Cal. Civ. Code § 1788.17;
- 12 f) Adjudging that Defendant willfully violated Cal. Civ. Code § 1788.17.
- 13 g) Enjoining Defendant from continuing to place calls to Plaintiff's cellular telephone
14 number, and from continuing to place calls to the cellular telephone numbers of
15 members of the proposed TCPA class without prior express consent;
- 16 h) Awarding Plaintiff and the TCPA class damages under 47 U.S.C. § 227(b)(3)(B);
- 17 i) Awarding Plaintiff and the TCPA class treble damages under 47 U.S.C. § 227(b)(3);
- 18 j) Awarding Plaintiff and the Rosenthal Act class statutory damages under Cal. Civ. Code
19 § 1788.30.
- 20 k) Awarding Plaintiff and the classes reasonable attorneys' fees, costs, and expenses under
21 Rule 23 of the Federal Rules of Civil Procedure.
- 22 l) Awarding Plaintiff and the Rosenthal Act class reasonable attorneys' fees, costs, and
23 expenses under and Cal. Civ. Code § 1788.30;
- 24 m) Awarding Plaintiff and the members of the classes any pre-judgment and post-
25 judgment interest as may be allowed under the law; and
- 26 n) Awarding such other and further relief as the Court may deem just and proper.
- 27
- 28

Demand for Jury Trial

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable.

Date: January 24, 2019

/s/ Alyson J. Dykes

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